

ORDINANCE NO. 12-70

ORDINANCE GRANTING A VARIANCE PERMIT TO ALLOW A TOTAL OF 12 PARKING SPACES, WHERE 38 PARKING SPACES ARE REQUIRED, ALLOW A PERVIOUS AREA OF 13.13%, WHERE A MINIMUM 20% LAWN (PERVIOUS) AREA IS REQUIRED, AND TO WAIVE A PORTION OF THE LANDSCAPE MANUAL REQUIRING A SEVEN FOOT LANDSCAPED AREA BETWEEN THE OFF-STREET PARKING AND THE RIGHT-OF-WAY, CONTRA TO HIALEAH CODE §§ 98-2189(12), AND 98-2233. **PROPERTY LOCATED AT 122 WEST 23 STREET, HIALEAH, FLORIDA.** REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board at its meeting of September 12, 2012, recommended approval of this ordinance; and

WHEREAS, the applicant has proffered a Declaration of Restrictive Covenants providing, among other things, patient transportation, to and from the facility, by shuttle, a maximum total of 10 staff members present at the facility at any one time, including doctors, technicians, and all others employed or contracted to carry out the business purpose, to restrict any congregation of patients outside the building, to which the City accepts.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The below-described property is hereby granted a variance permit to allow a total of 12 parking spaces, where 38 parking spaces are required, to allow a pervious are of 13.13%, where a minimum 20% lawn (pervious) area is required, and to waive a portion of the landscape manual requiring a seven foot landscaped area between the off-street parking and the right-of-way, contra to Hialeah Code §§ 98-2189(12) and 98-2233, which provide respectively in pertinent part: "Hospitals. One parking space for every patient bed and one parking space for each 2,000 square feet of gross floor area."

and “The City Council, by ordinance, may waive the minimum landscaping requirements of the Miami-Dade County Landscape Manual” as modified and supplemented by the city landscape manual which provides at D(7) “Parking lot buffers. All parking lots adjacent to a right-of-way or private street shall be screened by a continuous planting and/or three (3)-foot high wall within a seven (7)-foot landscaped strip incorporating said planting and/or wall on private property.” and which further provides in Table A at (E) Tree and lawn requirements by zoning classification, that a minimum 20% lawn area (pervious) shall be provided for properties classified as M-1. Property located at 122 West 23 Street, Hialeah, Miami-Dade County, Florida, zoned M-1 (Industrial District), and legally described as follows:

LOTS 9 AND 10, BLOCK 150, OF TWELFTH ADDITION TO HIALEAH, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 8, PAGE 127 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

Section 2: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 5: Effective Date.

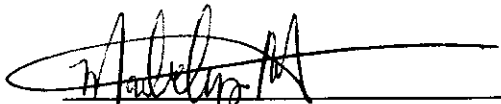
This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

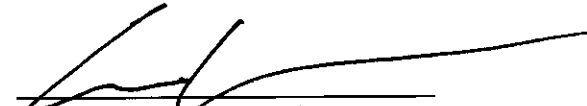
PASSED and ADOPTED this ____ day of _____, 2012.


Isis Garcia Martinez
Council President

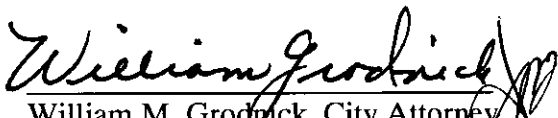
Attest:

Approved on this 5 day of Nov, 2012.


Marbelys Rubio, Acting City Clerk


Mayor Carlos Hernandez

Approved as to legal sufficiency and as to form:


William M. Grodnick, City Attorney



CFN 2012R0735903
UP: Bk 28315 Pgs 0166 - 167; (2pgs)
RECORDED 10/16/2012 13:27:23
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

Prepared by and return to:

City of Hialeah
Planning Division
501 Palm Avenue, Second Floor
Hialeah, FL 33010

DECLARATION OF RESTRICTIVE COVENANTS

We, Antonio Perez and Nilda Perez, joint and severally,

being the owners of lands more particularly described as

Lots 9 and 10, in Block 150, of Twelfth Addition to Hialeah, according to the Plat thereof, as recorded in Plat Book 8, at Page 127, of the Public Records of Miami-Dade County

having a folio number of 04-3107-006-0660 and a street address of 122 West 23 Street, Hialeah, Florida,

make the following Declaration of Restrictive Covenants covering and running with the above property, specifying that this restriction during its lifetime shall be for the benefit of and a limitation upon all present and future owners of the real property described above, in favor of and enforceable by the City of Hialeah, Florida.

In connection with the operation of a medical research laboratory thereon, the undersigned covenant, represent and agree as follows:

1. There shall be a maximum of 10 persons working at the laboratory at any one time, including doctors, nurses, technicians, and other supporting medical staff, executive, managerial or administrative employees and any other employee or independent contractor irrespective of his/her duties.
2. All patients must be transported to and from the facility by a shuttle bus. All available parking spaces will be reserved for the use of the staff, employees, or agents of the laboratory. Any patients or prospective test participants driving to the facility will be allowed to park on site so long as there are spaces available and parking on site will not be an impediment to the free flow of traffic in to or out of the facility, will not impede emergency vehicle access to the facility, will not create parking or traffic congestion on site or spillover offsite and will not disrupt the free flow of traffic off site.
3. No patients or prospective test participants will be allowed to congregate outside the building for any purpose related to the operation of the medical research laboratory including attending appointments or responding to calls for evaluation, analysis, or participation in medical research testing.
4. There shall be a maximum of 40 patient beds available for overnight stays.
5. This covenant is intended and shall constitute a restrictive covenant concerning the use, enjoyment, and title to the above-described property and shall constitute a covenant running with the land and may be recorded in the Public Records of Miami-Dade County, Florida. This covenant shall remain in full force and effect and shall be binding upon the undersigned, their

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heirs, successors and assigns until such time as the same is modified, amended or released and may only be modified, amended or released by a written instrument executed by the then owner having fee simple title to the property affected or to be affected by such modification, amendment, or release; provided, however, the same is also approved by the City Council and the Mayor of the City of Hialeah, or its successors, by resolution, upon advertised notice, or by ordinance if the covenant is adopted by ordinance or as otherwise provided in Hialeah Charter.

6. Where construction has occurred on said property described herein, pursuant to a permit issued by the City of Hialeah, and inspection made and approval of occupancy given by the City, the same shall create a conclusive presumption that the improvements thus constructed comply with the intent and spirit of the restrictions referenced herein and this Declaration of Restrictive Covenants shall not be construed as clouding title of any of said property on which such development has occurred.

IN WITNESS WHEREOF, We have hereunto set our hands and seals at Miami-Dade County, Florida, this 28th day of September, 2012.

Witness

Typed/Printed Name: TIRGO P. MARTINEZ

Witness

Typed/Printed Name: Sandra Martin

Antonio Perez

Nilda Perez

The foregoing instrument was acknowledged before me on this 28th day of September, 2012 by Antonio Perez and Nilda Perez. They are personally known to me or have produced the following KNOWN TO ME as identification and did (did not) take an oath and attest to the truth and accuracy of the representations contained herein.

This document was prepared by the City of Hialeah, Florida.

Notary Public

Typed/Printed Name: ADDYS STEWART

Commission No.:

